

Hung parliament no place to be ham-fisted on euthanasia

THE MEDDLING PRIEST

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In 1995, the Northern Territory Parliament passed Australia's first euthanasia law: The Rights of the Terminally Ill Act (NT). In 1997, the Commonwealth Parliament overrode the Territory law with its own Euthanasia Laws Act. The Commonwealth law did not repeal the Territory law but it rendered it inoperative.

In 2008, Greens leader Senator Bob Brown took the opportunity, once the Howard Government was out of power and no longer in control of the Senate, to introduce his Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill. It was a very shoddy piece of legislative drafting and went nowhere.

The introduction of the bill was ham-fisted. Even the Northern Territory Government opposed the bill. The Chief Minister of the Northern Territory, Paul Henderson, said at the time, 'I find it very high-handed and arrogant of Bob Brown from Tasmania to be introducing legislation in the Federal Parliament that affects the Northern Territory, without any consultation at all with the Territory Government, or the people of the Northern Territory.'

If the bill had been passed, it would have had the effect of resuming the operation of the original 1995 Territory law which by then even Dr Philip Nitschke had conceded in an article in *The Lancet* was defective legislation.

The NT law requires a psychiatrist to have 'confirmed that the patient is not suffering from a treatable clinical depression in respect of the illness' before a medical practitioner is allowed to administer the lethal injection. Nitschke and his co-author stated:

Confirmation was not easy since patients perceived such a mandatory assessment as a hurdle to be overcome. [Philip Nitschke] understood that every patient held that view. To what extent was the psychiatrist trusted with important data and able to build an appropriate alliance that permitted a genuine understanding of a patient's plight?

Some senators were concerned to learn that Dr Nitschke had personally paid the fee for the psychiatric assessment of one of the patients he euthanased.

So now we have a hung parliament and Brown wants to agitate the issue of euthanasia once again. There are three distinct issues.

First, the 1995 Northern Territory law is a bad law even for those who favour euthanasia with appropriate safeguards. So before any other step is taken the Northern Territory parliament should repeal the 1995 law, so we can start with a blank slate.

Second, since 1997 the legislatures of the Northern Territory, the ACT and Norfolk Island have been precluded by the Commonwealth parliament from passing laws providing for euthanasia. Presumably Brown will make sure he has the politicians and the people of the territories in the cart before he moves this time.

But there is no hurry. There is little pressure from the people and legislatures in these places about what is presently an academic issue. To date no state parliament has legislated for euthanasia. Two years ago, I said to the Senate committee:

[W]hat has changed in 10 years? In terms of what has changed, if you look at the United States, Oregon is still the only state which has euthanasia. Since the Commonwealth exercise the US Supreme Court has said there is no right to euthanasia. Lord Joffe's United Kingdom legislation has gone down, and we have had very clear statements from the medical authorities in the United Kingdom and a quite eloquent submission here from the AMA. So it would seem to me that on balance nothing has changed or, if anything, the anti-euthanasia case is probably slightly strengthened if we look at developments in equivalent jurisdictions.

Third, there is the difficulty of providing adequate safeguards for vulnerable individuals in their dying days. Last year there was a lot of attention on Christian Rossiter's request for termination of hydration and nutrition. The WA Supreme Court gave the go-ahead. But he decided not to continue the request.

A month after the judgment the media reported on Rossiter's condition, speculating that he might die soon from a respiratory infection. The *Sunday Age* reported:

The sad irony here, according to Dr Nitschke, 'is that [after the court case] he'd picked up a bit in himself, because people have been paying him attention'. He'd been particularly cheered by the ministrations of an outreach carer from Perth Home Care services. The *Sunday Age* understands the woman, who has been refused permission to speak to the media, had encouraged Mr Rossiter to record his life story, notably about his childhood in South Africa, with the idea of publishing a memoir.

What then was the court case about? He may well have been suffering intense pre-mortem loneliness, as distinct from depression. He died of a chest infection more than a month after the court gave the all clear for his carers to terminate hydration and nutrition should he request it.

Then came the case of Mr JT in the ACT Supreme Court with doctors wanting to terminate treatment. Chief Justice Higgins said:

The patient here lacks both understanding of the proposed conduct and the capacity to give informed consent to it. Thus, those charged with JT's care remain under the common law duty to provide that care to the best of their skill and ability.

The Chief Justice had cause to comment on 'an outrageous approach to ethical standards'

disclosed in the case.

The real quandary with assisted suicide through removal of nutrition and hydration is determining when the law will deem a decision to terminate life an act of informed consent, being irrevocable even though the patient has mood swings and moves in and out of consciousness. Not everyone who says, 'I wish to die. Please terminate all nutrition' will remain clearly of that resolve.

The law will need to specify the conditions for presuming that a patient has made an irrevocable choice for death even when no one would be adversely affected by the health provider complying with the later revoked wish of the failing patient clutching to life.

Presumably, there will be a need to impose an obligation on health professionals to ensure that the choice to die remains firm until loss of consciousness. If this obligation were always to be faithfully discharged (which it won't be), it would be very onerous.

I doubt that a hung parliament will have the time and resources to consider these complex issues in its early days. As Tony Abbott says, there are real 'bread and butter concerns' that this parliament needs to get its head around. Of the three issues raised, only the second is a Commonwealth concern.

Whether hung or not, the Commonwealth parliament needs to get on with its core business. Neither Rossiter nor Mr JT would have been helped by a repeat of the NT euthanasia law. Our leaders need to address the more urgent national questions.

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